

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

NATIONAL VIDEO RELAY SERVICE COALITION
REPLY TO OPPOSITION OF SORENSON MEDIA, INC.

The National Video Relay Service Coalition (the “Coalition”),¹ pursuant to Section 1.429(g) of the Federal Communications Commission’s (“Commission”) Rules,² hereby submits its reply to the “Opposition of Sorenson Media, Inc.” (“Opposition”) filed on November 15, 2004. Sorenson Media, Inc. (“Sorenson”) opposes those aspects of the petitions for reconsideration³ submitted in this proceeding that seek reconsideration of the Commission’s decision to extend the speed of answer waiver until January 1, 2006 or until the Commission adopts a speed of answer rule for Video Relay Service (“VRS”), whichever is earlier.⁴

¹ The National Video Relay Service Coalition is an *ad hoc* group that includes the following organizations: Telecommunications for the Deaf, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”), The Association for Late Deafened Adults (“ALDA”), the American Association of People with Disabilities (“AAPD”), Deaf and Hard of Hearing in Government (“DHHIG”), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), the Student Body Government of Gallaudet University (“SBG”), and the Registry of Interpreters for the Deaf, Inc. (“RID”).

² 47 C.F.R. § 1.429(g).

³ Communications Service for the Deaf, Inc. (“CSD”), Petition for Reconsideration, September 30, 2004 (“CSD Petition”); Hands on Video Relay Service, Inc. (“HOVRS”), Petition for Partial Reconsideration, October 1, 2004 (“HOVRS Petition”).

⁴ Section 64.604(b)(2) of the Commission’s rules require that telephone relay service

In its Opposition, Sorenson argues that there is a shortage of interpreters to handle VRS calls and that imposing a speed of answer requirement at this time would exacerbate that shortage. However, Sorenson's Opposition demonstrates a fundamental misunderstanding of how labor markets work, and thus mischaracterizes the issue.

At the outset, it is worth noting that it is unlikely that there really is a shortage of interpreters qualified to handle VRS calls. In its "Reply Comments on Further Notice of Proposed Rulemaking" submitted in this docket on November 15, 2005 ("HOVRS FNPRM Reply"), HOVRS explained that a total of 414 to 434 interpreters nationwide would be needed to handle 1 million minutes of VRS traffic in a 30-day month with an occupancy rate of 43 percent, and that this number would be sufficient to establish an answer speed of 30 seconds or less for 80 percent of the calls.⁵ Assuming for the purpose of discussion that Sorenson is correct when it states that there are 4,900 certified interpreters for American Sign Language ("ASL"), then only 8.9 percent of the available interpreters would be needed for VRS.

However, Sorenson is incorrect when reporting the number of qualified interpreters. As of June 2004, there were 5118 certified RID members and 3620 associate RID members. Since associate RID members are also qualified to interpret VRS calls, this brings the total to 8738 RID-certified interpreters as of June 2004. In addition there are 3,500 NAD-certified interpreters as well as interpreters that are certified in various state programs. For example there are 620 interpreters currently certified in the Missouri Interpreters Certification System ("MICS"), and only about 40 of them are also RID-certified. The Quality Assurance Screening Test ("QSAT")

("TRS") facilities answer 85 percent of all calls within 10 seconds. 47 C.F.R. § 64.604(b)(2). That requirement has been waived for VRS calls.

⁵ HOVRS FNPRM Reply, at 6. According to HOVRS, improving the answer speed from 30 seconds to 10 seconds for 80 percent of the calls would not require an appreciable increase in the number of interpreters. *Id.* at 6 n.3.

is used in several states, including Arkansas, Georgia, Hawaii, Kansas, Nebraska, and Oklahoma. Even taking into account dual certifications, there would still be a minimum of 12,000, and possibly many more, certified interpreters. Accordingly, less than four percent of the available interpreters would be needed to provide a reasonable speed of answer for VRS. This is hardly evidence of a shortage.

However, even if Sorenson is correct in claiming that there is a shortage of available interpreters, this alleged shortage would still not qualify as a reason to extend the speed of answer waiver, because extending the waiver keeps the demand for interpreters artificially low. In other words, if there really is currently a lack of qualified interpreters, the reason for this shortage would be the result of less demand for their services caused by, among other things, the speed of answer waiver.

If Sorenson's rationale had been applied in other industries, those industries might never have developed to the extent we know today. For example, if at the time the personal computer first began to be developed the industry concluded that further development would create problems because there would be a shortage of people qualified to repair computers and maintain computer networks, advances in computer technology may have been delayed or may not have occurred at all. Computer manufacturers would have slowed or stopped production, which would have led to a decrease in demand for computer repairs and network maintenance and less incentive for people to learn those skills. If, on the other hand, as happened, the computer industry continued to design and build more computers, the existence and distribution of those computers created a demand for people qualified to repair them and maintain networks, and that demand spurred the labor growth to meet it. This analogy applies equally to the speed of answer waiver issue.

Since the Commission reduced the VRS compensation rate,⁶ VRS providers have been unable to hire new qualified interpreters for VRS services.⁷ If the Commission continues the speed of answer waiver, the availability of funds to hire additional interpreters will remain limited and demand for additional interpreters will remain low, as there will be little incentive for people to learn to be interpreters.

On the other hand, if the speed of answer waiver is terminated, and the Commission provides appropriate reimbursement to VRS providers to hire new interpreters, the demand for new interpreters will encourage people to enter that field of employment. In other words, elimination of the speed of answer waiver will help create the market for VRS interpreters and any claimed shortages existing now will be eliminated. In fact, that is exactly what happened when Congress passed the Americans with Disabilities Act (“ADA”). At that time there were far fewer qualified interpreters than there are now. However, because of the ADA requirements to have interpreters in state and local government activities, places of public accommodation and by employers, the interpreting industry grew dramatically. Just as the number of interpreters increased to meet the demand for new interpreters resulting from the passage of the ADA, the number of interpreters will increase to meet the demand established by a speed of answer requirement for VRS.

⁶ *Telecommunications Relay Services*, Order, CC Docket 98-67, DA 03-2111, released June 30, 2003 (“*Bureau 2003 Reimbursement Order*”); *Telecommunications Relay Services*, Order, CC Docket No. 98-67, DA 04-1999, released June 30, 2004 (“*Bureau 2004 Reimbursement Order*”).

⁷ Sorenson Media, Inc. Petition for Reconsideration of the *Bureau 2003 Reimbursement Order*, July 30, 2003, at 3.

Indeed, as Sorenson noted, “[t]here are seven VRS providers competing to hire as many of the certified interpreters as possible.”⁸ As in any industry where the demand for qualified personnel is great, companies will offer greater incentives (*e.g.*, compensation, benefits, training, etc.) in order to attract those highly-skilled employees. This competition for qualified interpreters will draw more individuals to that profession and, in turn, increase the pool of available interpreters. In order for this to work properly, however, the Commission must ensure that VRS providers receive a level of compensation for VRS that will enable them to provide the increased incentives necessary to attract more interpreters.

In addition, to the extent the speed of answer requirement is burdensome to a particular VRS provider, the burden can be eased if the provider were to permit VRS interoperability. For example, when Sorenson provides VRS equipment to customers, as a condition for receipt of the VRS equipment, Sorenson requires that the customer agree not to use any other provider for VRS service. As a result, the customer may not utilize the services of another provider, no matter the length of Sorenson’s wait time. If Sorenson were to permit its subscribers, or the Commission were to require Sorenson to permit its subscribers, to use other VRS providers in the event the customer is experiencing a delay in receiving an answer from an interpreter, that could mitigate particular instances when a provider could not meet the speed of answer requirement.

Sorenson also argues in its Opposition that mandating speed of answer requirements will elevate one element of functional equivalency over all other requirements of the ADA⁹ and result

⁸ Sorenson, Comments, October 18, 2004, at 8.

⁹ 47 U.S.C. § 225(a)(3).

in a lower quality and less accessible service. Sorenson claims, for example, that the hours of service availability may need to be cut if the speed of answer waiver is terminated.¹⁰

Sorenson's argument makes little logical sense. Service is not readily available if a user must wait 20 or 30 minutes, or even longer, for a VRS interpreter to answer.¹¹ In order to achieve true functional equivalency, VRS must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. A hearing telephone user can pick up his or her telephone, dial a number and expect to reach the number called. VRS must provide this same level of availability. VRS cannot be functionally equivalent, as required by the ADA if users must wait 20 to 30 minutes or longer for the call to be answered. Functional equivalency demands more than that. Section 64.604(b)(2) of the Commission's rules requires that TRS facilities answer 85 percent of all calls within 10 seconds, and the Coalition supports termination of the waiver of that requirement for VRS calls as of January 1, 2005.

Lastly, Sorenson argues that mandating speed of answer requirements would increase costs, resulting in the need for higher reimbursement rates. The Coalition acknowledges that achieving functional equivalency for VRS will increase costs. However, the ADA requirement for functional equivalency is limited only by that which is possible. The ADA does not set financial conditions, limits or restraints on the requirement of functional equivalency. Rather, the ADA defines TRS as:

[T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech

¹⁰ Sorenson Opposition at 2-3.

¹¹ HOVRS FNPRM Reply at 6.

impairment to communicate using voice communication services by wire or radio.¹²

In other words, the ADA requires that TRS be functionally equivalent to voice telephone services. The ADA also requires the Commission to:

. . . [E]nsure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.¹³

Lastly, the ADA requires that the carriers provide TRS.¹⁴ In short, the ADA requires the Commission to make sure not only that TRS be available, but that those receiving TRS receive functionally equivalent service in the most efficient manner to the extent possible. Making a VRS user wait for 20 to 30 minutes or longer for an interpreter to answer does not qualify as either efficient or functionally equivalent service to the extent possible.

Conclusion

The ADA requires the FCC to ensure that functionally equivalent telecommunications services be made available to people who are deaf or hard of hearing at the earliest possible time. The FCC does not have the authority to use costs or supply of interpreters as a reason to slow down the achievement of functional equivalency. Rather, the FCC is required to move expeditiously to overcome the issues of cost and supply of interpreters in fulfilling its mandate of achieving functional equivalency.

¹² 47 U.S.C. § 225(a)(3).

¹³ 47 U.S.C. § 225(b)(1).

¹⁴ 47 U.S.C. § 225(c).

As a result, VRS must be readily available on-demand and must provide the ability for people who are deaf or hard of hearing and their contacts to communicate spontaneously and accurately. Because voice telephone users ordinarily obtain instant dial tone, VRS providers must answer 85 percent of all VRS calls within 10 seconds as required by Section 64.604(b)(2) of the Commission's rules, or VRS will not be functionally equivalent. Since the record in this proceeding does not show any technical impediment to meeting the speed of answer requirement, it is simply unfair to VRS users and a violation of the functional equivalency requirement of the ADA to make VRS users wait 20 to 30 minutes to place a VRS call, when voice telephone users can place a call in a matter of seconds. Therefore, the Coalition supports termination of the speed of answer waiver as of January 1, 2005.

Respectfully submitted,

/S/

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